

XIII. (TEMPORARY) PRELIMINARY DECREE

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## A. GENERAL DISCUSSION

After the water court has completed its review of the department's summary report and any requested changes are completed for the basin, a (temporary) preliminary decree will be issued.

The department's summary report is not issued as part of the decree. However, a hard copy or microfiche copy is available upon request at the Helena central office.

Issuance of a decree is a cooperative process between the water court and department records section staff. The water court provides the Notices of Availability and Findings of Fact and Conclusions of Law. The department provides decree abstracts, decree indexes, microfilm, and mailing supplies.

There are two types of water right decree abstracts -- a public copy and an owner copy.

- The public copy is bound into decree books and delivered to the water court, clerks of court, department offices, and anyone purchasing a complete decree. The decree books contain all claims in the basin organized by claim number on numbered pages.
- The owner abstract is the same as the public copy except that the name of the owner the abstract is printed for is listed on each abstract. A separate abstract is generated for and mailed to each owner of the right. The printing is in owner name order. Pages are not numbered. In this printing, individual rights are separated to be mailed along with a Notice of Availability.

When a decree is issued, all individuals listed as current owners of record in the computer are sent decree abstracts for their water rights. Also, every water right owner in the computer record for the basin, whether they have claims, new appropriations or reservations, is sent a Notice of Availability. In addition, a notice is sent to all interested parties.

Each clerk of court within the basin is sent a complete printed or microfiche copy of the (temporary) preliminary decree which includes abstracts, findings, conclusions, and indexes. The water court, the records section, and local regional offices also receive copies of the decree, findings, conclusions, and indexes. The water court, local regional office, records section and one designated clerk of court also receives updated microfiche of each individual water right claim in the basin.

The Notice of Availability specifies who receives specific information and provides addresses and phone numbers of all involved offices. Check the notice to make sure that regional office phone numbers and addresses are correct.

It is a good idea to visit each clerk of court in the basin to make sure they have received all decree materials and to answer questions on their use. Let the clerks of court know that you are available to help them with problems of a mechanical nature, but that all questions of a legal nature should be directed to the water court.

A 180-day objection period is set by statute. By petition the water court may grant an extension of time. During this period, regional office personnel can expect questions related to the decrees and summary reports. Remember our role is limited. Observe relevant water court orders and department policies, discussed in "Assistance Supplied To Public" below, in all public contact.

Upon close of the objection period, the regional office should return all claim files for the basin to the records section for storage in archives. A copy of the decree and indexes should be retained in the regional office.

Depending on objections received, the water court may order the regional office to provide certain information or conduct field investigations. The water court may also order regional office staff to appear at a hearing. The plaintiff or defendant may require (subpoena) regional office staff to testify. Guidelines and policy covering these situations is in the "DNRC Objection Policy And Procedures Manual".

B. EXAMPLE ABSTRACT, NOTICE OF AVAILABILITY, INDEX

1. Abstract. Exhibit XIII-1 is an example format of a water right abstract in the (temporary) preliminary decree. It is how a water right appears in the decree by claim number and page number.

2. Notice Of Availability. Exhibit XIII-2 is an example of the Notice of Availability. Every water right owner of record in a basin, those with claims, new appropriations, or reservations, will receive this form. In addition, the notice is sent to various interested parties as specified by court order.

3. Indexes. Each complete copy of a decree have a set of six indexes. The indexes are:

- source
- owner name
- point of diversion
- priority date
- water right ID number
- issues

The first five indexes contain the same information but are arranged in different orders. The issues index is arranged by water right number and contains unresolved issues identified through department examination or by the water court in resolving objections to a previous decree. See Exhibit XIII-3 for examples.

Exhibit XIII-4 is a set of instructions explaining how to use the decree indexes. The instructions explain how the indexes are organized and what information each index provides. Instructions are attached to each set of indexes sent to the clerk of court, water court, department records section, and regional offices.

Other indexes, such as a conveyance facilities index, can be provided to the regional office upon request.

### C. ASSISTANCE SUPPLIED TO PUBLIC

1. Guidelines. From issuance of the (temporary) preliminary decree through final decree, regional office personnel can expect questions related to the decree. Carefully read Judge Lessley's letter and Order (Figure XIII-1) to regional office personnel. These documents establish the framework for decree related public assistance.

Assistance to the public should be limited to locating requested data and if necessary "translating" the data. Answers to questions such as "What happens next?" or "What should I do now?" should be limited to procedural steps designated in statute or guidelines provided in the Court's Notice of Availability. Do not provide technical expertise, legal advice or consultation services.

2. Materials Available. All department records pertaining to the adjudication of water rights are public records and open to inspection by any person. Figure XIII-2 lists the various materials which may help the public understand the decrees. It is suggested this figure be on display wherever the public will be reviewing the decree and summary report.

3. Public Review Of Individual Claims. Claimants or their representative may wish to examine individual claims and related materials. In general, "claim" means the original claim and attachments as submitted by the claimant plus the examination worksheet, code sheets, etc. that would be in each claim folder. "Related materials" means pertinent topographic maps, old and new aerial photographs, etc. that are part of the regional office general resource materials.

The original documents which make up the claim are irreplaceable. Each time they are handled the potential exists for them to be lost or damaged. Even though claims are part of the public record, the water court's policy is to keep their handling to a minimum, and to take all practical precautions for their safekeeping. The recommended procedure for accomplishing this is as follows.

- People wishing to review claims should be encouraged to do their initial review from microfiche. It is available in several locations and can be replaced if necessary.
- After reviewing the fiche, any documents which cannot be read or which do not make acceptable copies from a reader-printer, may be examined in their original form.
- UNDER NO CIRCUMSTANCES MAY ANY ORIGINAL CLAIM FILE OR PART THEREOF BE REMOVED FROM THE REGIONAL OFFICE. Original claim files may only be examined in the regional office under close supervision. Rather than hand the entire original file to someone, it is best to photocopy the pertinent portions for review.

FIGURE XIII-1

**TRANSCRIPTION OF  
JUDGE LESSLEY'S LETTER  
AND ORDER**

Montana  
Water Courts  
Telephone (406)586-4364

To Personnel of DNRC Water Rights Field Office:

People with water claims can get excited when their Preliminary Decree is issued!

It is natural that they come to you. But the situation has changed. It is now in formal Court situation.

I don't want any of you to be embarrassed by being brought into Court for testimony about what you did or did not say, (and you'd be surprised at the "change" of simple statements you have made on retelling - especially in a Court case.)

Nor do I want you to be charged by some lawyer with "practicing law."

You will have our Order.

Your answer to the claimant can be simple and safe. You can say, "We can't discuss the decrees of the water court with you, a water claimant. But you, the claimant, can call or write the Chief Water Judge W. W. Lessley, Post Office Box 879, Bozeman, MT 59715, for information.

You are entitled to this concern on our part. Don't try to read any complicated or devious meaning into this Order and letter - there "ain't none."

Sincerely,

W. W. Lessley,  
Chief Water Judge

WWL/nf

FIGURE XIII-1 (cont.)

**TRANSCRIPTION OF  
JUDGE LESSLEY'S LETTER  
AND ORDER**

IN THE WATER COURTS OF THE STATE OF MONTANA  
CONCERNING THE PRELIMINARY  
DECREES AND OTHER DECREES  
OF THE MONTANA WATER COURTS.

O R D E R

Our adjudication program is "on course" and on schedule. In the months ahead many Basins will be in the "objection period" of litigation. Water claimants will be concerned, will be seeking advice, and talking of their water rights in that Preliminary Decree as contrasted with their original claim they filed with this Court.

Once the Preliminary Decree with its abstracts is issued we are clearly in the legal phase, and even more important, "in Court" in the Water Courts of Montana.

It is unwise, confusing, improper, and illegal for field personnel to discuss, advise, or suggest procedures for claimants concerning the Preliminary Decree.

ORDERED, that all Field Personnel refrain from advising, suggesting, or commenting with water claimants about the merits of any Preliminary Decree.

ORDERED, that all inquiries written or oral, concerning a Preliminary Decree of the Water Courts of the State of Montana be referred to Chief Water Judge W. W. Lessley, Post Office Box 879, Bozeman, MT 59715.

This Order is concurred in by all the Water Judges, Robert M. Holter, Bernard W. Thomas, and Roy C. Rodeghiero.

DATED this 18th day of January, 1984.

signed

W. W. LESSLEY,  
Chief Water Judge

FIGURE XIII-2

MATERIALS AVAILABLE FOR PUBLIC REVIEW

Decree

1. Judge's adoption Order
2. General Findings of Fact and Conclusions of Law
3. Judge's Memoranda
4. Indexes

Department's Summary Report

Notice of Availability

Supreme Court Water Right Claim Examination Rules

Examination Materials

1. Microfiche of claim files
2. Hard copy of claim files (if microfiche is inadequate)
3. USDA aerial photographs and mylar overlays
4. Topographic maps
5. Orthophotoquads
6. Decree exceeded index

Additional Regional Office Materials

1. Water Resources Survey books
2. Water Resources Survey field form microfiche
3. Water Resources Survey research data
4. Notice of Appropriation indexes
5. Decree Indexes
6. County groundwater (GW) records
7. Old aerial photographs
8. General Land Office survey plats (GLO's)
9. Montana statutes
10. Conveyance Facilities Indexes (optional)



#### D. RETURNED MAIL PROCEDURES

The returned mail procedures presented in this section apply to returned Notice of Entry of Temporary Preliminary Decree and Notice of Availability (decree notices), returned Notice that Objections Have Been Filed and Hearings Requested (objection notices), and returned Final Decree Notices.

Mail which cannot be delivered is returned to the Water Rights Bureau in Helena. Records section staff will sort the returned mail into groups. One group will be forwarded to the appropriate regional office to be researched. Records section will process two groups. The remaining groups will not be researched for adjudication purposes.

It is imperative returned mail sent to the regional office be researched, documented, and returned to the records section as soon as possible. The goal is to locate and notify claimants before:

- the end of the objection period (180 days) as stated in the decree notice, or
- the notice of intent to appear period (30 days) as stated in the objection notice. However, it is not critical if research exceeds the 30 day period, since individuals involved with this group do not have to file a notice in regard to their own right.

##### 1. Records Section Procedures.

a. Owner Indexes. Prior to the issuance of a decree or objection list notice, owner indexes are used to facilitate the mailing. These same indexes are also used to document the processing of returned mail.

For decree notice returned mail, two indexes will be used:

- Current claim owners (SBIX)
- Current new appropriations owners (NAIX)

For objection notice returned mail, three indexes will be used:

- Current claim owners with individual objection notices (OBJIX)
- Current claim and new appropriations owners without individual objection notices (NONOBJIX)
- Transferred owners since decree issued (TRIX)  
(with and without individual objection notices)

Put the indexes into a three ring binder. At the top of the index, add a legend to explain the different highlighters, checkmarks, asterisks, etc. See Figure XIII-3. When the returned mail procedures for a basin are complete, the indexes will be stored with the basin files.

FIGURE XIII-3

## DECREE NOTICE RETURNED MAIL LEGEND

Index	Description Of Group	Symbol
SBIX	Group 1: SB Owners  No Address Provided or Deceased	Highlight Pink = returned X = address coded XX = new owner found XXX = research dead end Deceased
	Group 2: SB Owners  Address Provided	Highlight Pink = returned X = address coded
NAIX	Group 3: NA Owners  Address Provided or Deceased	* = returned and address coded Deceased
	Group 4: NA Owners No Address Provided	✓ = returned and no address provided

## OBJECTION NOTICE RETURNED MAIL LEGEND

Index	Description Of Group	Symbol
OBJIX	Group 1: SB Owners (w/ ind. obj. notice)  No Address Provided or Deceased	Highlight Pink = returned X = address coded XX = new owner found XXX = research dead end Deceased
	Group 2: SB Owners (w/ ind. obj. notice)  Address Provided	Highlight Pink = returned X = address coded
NONOBJIX	Group 3: SB & NA Owners (w/o ind. obj. notice)  Address Provided or Deceased	* = returned and address coded Deceased
	Group 4: SB & NA Owners (w/o ind. obj. notice)  No Address Provided	✓ = returned and no address provided
TRIX	Group 5: Past SB Owners	✓ = returned and no address provided

b. Decree Notice Returned Mail. Check that all manila envelopes have the "DNRC date received" stamp. If it is missing, stamp the date the envelope was received in the department underneath the postmark.

*Note: Sometimes returned mail may be received which should have been returned to the Water Court (notices sent by the court to interested parties). If so, forward this mail to the Water Court.*

Sort returned mail from the decree notices into the following four groups.

GROUP 1. Claim Owners ("M")

These will be manila envelopes where a forwarding **address has not been provided or where it indicates the owner is deceased**. These envelopes contain decree abstracts, the notice of availability, an address correction mailer and possibly other notices.

Highlight the owners name in **pink** on the SBIX index and on the mailing label. For deceased owners, write "deceased" next to the owners name on the index.

Once the bulk of the returned mail has been received and sorted, bundle the returned mail from this group and send to the regional office for research. Attach a "DO NOT STAMP RECEIVED" flag to the top. Process and send to the regional office subsequent batches of returned mail associated with this group.

GROUP 2. Claim Owners ("M")

These will be manila envelopes where a forwarding **address is provided**. These envelopes contain decree abstracts, the notice of availability, an address correction mailer and possibly other notices.

Highlight the owners name in **pink** and add a X to the left margin of the SBIX index to denote the change of address has been updated in the computer.

New Address Correction. Update the computer following the Owner Name/Address Standardization Manual. Write the lowest claim number in the upper right hand corner of the envelope and initial it to indicate coding has been done. Forward the material in the returned manila envelope to the new address. Film and file the original returned manila envelope in the claim number written in the upper right hand corner.

GROUP 3. New Appropriations Owners ("M")

These will be #10 white envelopes (4" x 9.5") where a

forwarding **address is provided or where it indicates the owner is deceased.** The mailing label will have a "NA" in the upper right hand corner. These envelopes contain a notice of availability, an address correction mailer and possibly other notices.

Add an asterisk (\*) to the left margin of the NAIX index to denote the change of address has been updated in the computer. For deceased owners, write "deceased" next to the owners name on the index.

New Address Correction. See instructions for Group 2 above.

Deceased Owner. Update the computer following the Owner Name/Address Standardization Manual. Write the lowest active water right number in the upper right hand corner of the envelope and initial it to indicate coding has been done. Film and file the original returned envelope in the water right number written in the upper right hand corner.

#### GROUP 4. New Appropriations Owners ("M")

These will be #10 white envelopes where a forwarding **address has not been provided.** The mailing label will have a "NA" in the upper right hand corner. These envelopes contain a notice of availability, an address correction mailer and possibly other notices.

Add a checkmark (✓) to the left margin of the NAIX index to denote that these have been returned.

Returned mail from this group will not be researched for adjudication purposes. However, before discarding the group, check with the regional office manager. The manager may request this group be sent to the regional office to be researched for new appropriations data base enhancement.

c. Objection List Notice Returned Mail. Sort returned mail from the objection list notices into the following four groups.

*Note: Sometimes returned mail may be received which should have been returned to the Water Court (notices sent by the court to interested parties). If so, forward this mail to the Water Court.*

#### GROUP 1. Claim Owners ("M") With Individual Objection Notices

These will be in manila envelopes where a forwarding **address has not been provided or where it indicates the owner is deceased.** The mailing label will have "WRB-OBJ" in the upper right hand corner. These envelopes contain individual notices of objection, the basinwide notice of

objection, an address correction mailer and possibly other notices.

Highlight the owners name in **pink** on the OBJIX index and on the mailing label. For deceased owners, write "deceased" next to the owners name on the index.

Once the bulk of the returned mail has been received and sorted, bundle the returned mail from this group and send to the regional office for research. Attach a "DO NOT STAMP RECEIVED" flag to the top. Process and send to the regional office subsequent batches of returned mail associated with this group.

#### GROUP 2    Claim Owners ("M") With Individual Objection Notices

These will be manila envelopes where a forwarding **address is provided**. The mailing label will have "WRB-OBJ" in the upper right hand corner. These envelopes contain individual notices of objection, the basinwide notice of objection, an address correction mailer and possibly other notices.

Highlight the owners name in **pink** and add a X to the left margin of the OBJIX index to denote the change of address has been updated in the computer.

New Address Correction.    Update the computer following the Owner Name/Address Standardization Manual. Write the lowest claim number in the upper right hand corner of the envelope and initial it to indicate coding has been done. Forward the material in the returned manila envelope to the new address. Film and file the original returned manila envelope in the claim number written in the upper right hand corner.

#### GROUP 3.    Claim And New Appropriations Owners ("M") Without Individual Objection Notices

These will be #10 white envelopes (4" x 8.5") where a forwarding **address is provided or it indicates the owner is deceased**. The mailing label will have "WRB" in the upper right hand corner. These envelopes contain the basinwide notice of availability, an address correction mailer and possibly other notices.

Add an asterisk (\*) to the left margin of the NONOBJIX index to denote the change of address has been updated in the computer. For deceased owners, write "deceased" next to the owners name on the index.

New Address Correction.    See instructions for Group 2 above.

Deceased Owner. Update the computer following the Owner Name/Address Standardization Manual. Write the lowest active water right number in the upper right hand corner of the envelope and initial it to indicate coding has been done. Film and file the original returned envelope in the water right number written in the upper right hand corner.

GROUP 4. Claim And New Appropriations Owners ("M") Without Individual Objection Notices

These will be #10 white envelopes where a forwarding **address has not been provided.** The mailing label will state "WRB" in the upper right hand corner. These envelopes contain the basinwide notice of objection, an address correction mailer and possibly other notices.

Add a checkmark (✓) to the left margin of the NONOBJIX index to denote that these have been returned.

Returned mail from this group will not be researched for adjudication purposes. However, check with the regional office manager before this group is discarded. The manager may request this group be sent to the regional office to be researched for data base enhancement.

GROUP 5. Transferred Owners Since Decree Issued (with and without individual objection notices)

These will be either manila or #10 white envelopes where a forwarding **address has or has not been provided.** The mailing label will state "WRB-T" in the upper right hand corner. These envelopes contain the basinwide notice of objection, an address correction mailer and possibly other notices.

Add a checkmark (✓) to the left margin of the TRIX index to denote that these have been returned.

Returned mail from this group will not be researched for adjudication purposes.

New Address Correction. See instructions for Group 2 above.

Deceased Owner. See instructions for Group 3 above.

d. Processing Procedures. After returned mail from Group 1 is researched by the regional office, it will be returned to records and should be in three bundles (see part 2 below). To document completed processing and account for research efforts, use the conventions from Figure XIII-3 to mark the left margin of the indexes.

Address Changes. Address changes will be highlighted on the returned mail research record (Figure XIII-4). Update the computer using this information. Add a X to the left margin of the proper index to note the change to the data base.

Deceased Owners. Update the computer following the Owner Name/Address Standardization Manual. If trustee is listed, update accordingly. Write "deceased" next to the owner's name on the proper index. Add a X to the left margin of the index to note the change to the data base.

New Owners. When a new owner has been determined, add a XX to the left margin of the proper index.

Research Dead End. If the regional office was unable to determine either a new address or a new owner, add a XXX to the left margin of the proper index to note "dead end" research.

Film and file all material returned from the regional office. This will include the returned mail research record and the original returned envelope, and may include correspondence. After filming, send the returned mail material to where the files are located (water court, regional office, records management).

Check the index to confirm that all Group 1 returned mail (highlighted in pink) sent to the regional office has been returned and processed. If there is outstanding returned mail, call the regional office to find out when it will be returned.

2. Regional Office Research Procedures. Only returned mail associated to Group 1 (current claim owners) will be sent to the regional office to be researched.

Because of budgetary and manpower constraints, returned mail associated with Group 4 will not be researched for adjudication purposes, and will normally be discarded. However, depending on office workload, the regional manager may request this group be sent for research and data base enhancement.

a. Researching Returned Mail. Research returned mail for ownership and/or address changes as outlined below.

- Check regional office records for varying addresses on different filings, for example a 600 or 602. Call owner to verify ownership and/or correct address. Document the contact.
- Check area telephone directories. If owners are listed call to verify ownership. If the party is still the legal owner obtain the new address. Document the contact.
- Check co-owner or any other individuals referenced in the water right records. Contact any relevant party who may aid in determining current ownership and/or addresses. Document

the contact.

- Check local county assessor's office. This office usually has current ownership and address information. These records list the individuals to whom the property tax statements were mailed along with the property description. If these records match our ownership, document research findings. If the ownership does not match, continue research efforts.
- Check county plat books at the clerk and recorders office to determine current ownership and address. Document research findings.
- Deceased owners. Estates may not be resolved, therefore research should try to locate a trustee. Determine whether a change in ownership has occurred, or only a change of address is required, i.e., c/o trustee or personal representative. Document research findings.

**NOTE:** If during research it is determined a new owner is involved, they will be contacted as described below. However, a new address for the owner listed on the return envelope should also be pursued. As the owner listed on the return envelope may still have a vested interest in the water rights, it is important they also be contacted as described below.

b. Returned Mail Research Record Form. For each piece of returned mail, complete a **return mail research record form** (Figure XIII-4) to document information sources, research findings, and correspondence.

Only the lowest numbered claim within a common ownership will contain all documentation, e.g., returned mail research record form, original returned envelope, and correspondence. However, if research determines a new owner is involved, complete the last line on the form with the claim number containing all documentation and make a copy of the research record form for each water right in the returned envelope which is appurtenant to the new owners property.

New Address. Document and **highlight** this information under RESEARCH FINDINGS so records may code directly from the form.

New Ownership. If new ownership is determined, document the new owners name and address under RESEARCH FINDINGS but do not highlight. New ownership will only be updated upon receipt of a completed transfer certificate (Form 608).

New Address/Ownership Unresolved. If a new address and/or ownership cannot be determined, document the research efforts under RESEARCH FINDINGS, but do not highlight. Explain the information sources which were researched. Attach the returned envelope with contents to the research record form.



FIGURE XIII-4

WATER RIGHT NUMBER  
(film and file)

DNRC RETURNED MAIL RESEARCH RECORD

Water Right No(s): \_\_\_\_\_

Owner(s) of Record: \_\_\_\_\_

Address of Record: \_\_\_\_\_

RESEARCH FINDINGS:

\_\_\_\_\_ Address Changed (document below or Change of Address form)  
\_\_\_\_\_ Address Unconfirmed (document below)  
\_\_\_\_\_ New Ownership (document below)  
\_\_\_\_\_ Ownership Unconfirmed (document below)

SOURCES USED:

\_\_\_\_\_ Telephone. Party contacted: \_\_\_\_\_  
\_\_\_\_\_ Field office water right records.  
\_\_\_\_\_ Field office county records of present owners  
\_\_\_\_\_ County Clerk & Recorder's tract books.  
\_\_\_\_\_ County Appraiser (Dept. of Revenue, local office).  
\_\_\_\_\_ County Surveyor's office.  
\_\_\_\_\_ County Treasurer's office.  
\_\_\_\_\_ County Assessor.  
\_\_\_\_\_ Secretary of State for corporations.  
\_\_\_\_\_ Other: \_\_\_\_\_

Information Sent to Researched Owner and Address; Date Sent: \_\_\_\_\_

\_\_\_\_\_ Letter (Exhibit \_\_\_\_\_)  
\_\_\_\_\_ Change of Address Form  
\_\_\_\_\_ Notice of Availability  
\_\_\_\_\_ Notice of Objections  
\_\_\_\_\_ Individual Objection Notice  
\_\_\_\_\_ Water Right Transfer Certificate  
\_\_\_\_\_ Abstracts  
\_\_\_\_\_ Summary Reports

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

See claim file \_\_\_\_\_ for further information and documentation.

c. Processing Returned Mail. Once a new address and/or ownership is determined, material from the returned mail envelope will be forwarded as described below.

For new address, forward the material from the returned envelope in a new envelope. Attach the original returned envelope to the research record form.

For new ownership, mail the new owners copies of the material from the returned envelope, a transfer certificate, and a change of ownership letter (Exhibit XIII-5).

d. Finishing Steps. Once confident all forwarded mail has been received, send all researched returned mail to records section. The returned mail should be separated into three bundles.

- First bundle should contain the **highlighted** research records which need coding (updated addresses). Sort this bundle by ownership for coding purposes.
- Second bundle should contain returned mail where research found a new owner. Sort this bundle by numerical order.  
Note: If a transfer is received from the new owner, it will be processed with other transfers.
- Third bundle should contain returned mail where research was inconclusive, i.e., dead end. Sort this bundle by numerical order.

e. Filing Procedures. Once the research information sent to records section is coded and filmed, it may be returned to the regional office for filing if the original claim files are at the office. File any documents returned from records with the respective claim file as follows:

- File the original returned mail materials in the reference file, normally the lowest claim number.
- File the individual research record copies in their respective claim files.

## E. POST-DECREE REVISIONS

### ERRORS FOUND IN DECREES

WITHOUT PROPER AUTHORITY, REGIONAL OFFICE OR CENTRAL OFFICE  
STAFF MAY NOT CORRECT ERRORS IN DECREES USING DCPROD.

A decree is a legal document and may only be corrected by the water court. According to Supreme Court rule, changes to the computer record may only be made by the department after issuance of a decree in the following circumstances.

- As specifically ordered or directed in writing by the water court.
- In compliance with changes in appropriation rights (§85-2-402, MCA), and water right transfers (§85-2-421 through 85-2-426, MCA).

However, owner names and addresses have been corrected after a decree has been issued.

If an error is found in a decree, follows the procedures described below:

- If an error is found in the name or address, send a memorandum or a copy of the decree abstract showing the correction to the program manager or records section supervisor. Explain in the memorandum or on the decree abstract how the error was identified.
- If an error other than owner name or address is found and the objection period has not closed, send a copy of the decree abstract showing the correction to the program manager. If an explanation is needed, explain on the decree abstract or attach a memorandum. These errors will be sent to the water court as formal objections or as comments to the decree.
- If an error other than owner name or address is found and the objection period has closed, the water court must be notified in writing, by a memo or letter containing:
  - i) water right ID number and basin code
  - ii) water right elements that are incorrect
  - iii) corrections (which should be well supported)
  - iv) any documentation that may be helpful (maps, deed, etc.; do not include items already in the case or claim file.)
  - v) short discussion of how error was discovered
  - vi) copy of decree abstract with correction clearly made

All post-decree correspondence with the water court regarding

corrections to decrees must be routed through the Helena central office for approval. Attach a note stating that the memo should not be stamped with the date received. The memo will be reviewed, filmed and forwarded to the water court. An example letter is included as Figure XIII-4.

If the claimant decides to contact the water court directly, encourage them to send a copy of the correspondence to the department so it can be filmed. Being apprised of actions between the claimant and the water court may prevent confusion and possibly save time if a change application for that claim is submitted.

**FIGURE XIII-5**

**DECREE ERROR NOTICE MEMO**  
(Use Regional Office Letterhead)

MEMORANDUM

TO: Montana Water Courts

FROM: Beth A. Stein, Water Resources Specialist

DATE: February 18, 1987

SUBJECT: 42L-W121796-00  
Ernest and Peggy Tooke, Owners

During the routine processing of an Application For Change filed with the Department, an error was found on the decree abstract of 42L-W121796-00 in the final decree.

The place of use and point of diversion legal land descriptions for this water right are incorrect. Section 6, Township 3 North, Range 56 East, belongs to Paul and Althea Ringling, as shown on the enclosed deed. Mr. Ringling confirmed there is no well in the NW $\frac{1}{4}$  of Section 6, and, he believes the Tookes own Section 6 in Township 2 North, Range 56 East.

The claimant's map in the claim file, showing the well, is labeled Township 2 North. A comparison of the USGS quad map (copy enclosed) with their map further confirms the correct township as 2 North, not 3 North as claimed and decreed.

A photocopy of the final decree abstract showing the correction is enclosed for your reference. If it is determined that this is a clerical correction that should be made, please send an order to Jim Kindle, Records Section Supervisor, in Helena.

Thank you for your consideration in this matter.

BS:lp

Enclosures

